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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,754	03/18/2004	Guy Darell Unwin	2457.003	6875
23405 7590 06/15/2007 HESLIN ROTHENBERG FARLEY & MESITI PC 5 COLUMBIA CIRCLE ALBANY, NY 12203			EXAMINER STULII, VERA	
			ART UNIT 1761	PAPER NUMBER
			MAIL DATE 06/15/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/803,754

Applicant(s)

UNWIN, GUY DARELL

Examiner

Vera Stulii

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/10/04, 6/6/05, 11/19/04</u> | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 13 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 13 and 14 are rendered indefinite for the recitation of the phrase "wherein the containing means further comprise a foodstuff hygienically sealed within an outer wrapper". It is not clear whether container is sealed within the outer wrapper or foodstuff is sealed within the outer wrapper. On page 3 of Specification applicant states "the container with foodstuffs therein is hygienically sealed within an outer wrapper". Therefore examiner is construing recited phrase "wherein the containing means further comprise a foodstuff hygienically sealed within an outer wrapper" (claims 13, 14) as "the container with foodstuffs therein is hygienically sealed within an outer wrapper" (Specification [0014] p.3).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Unwin (WO 01/00501) in view of Beale et al (US 2003/0047838).**

In regard to claim 1, Unwin discloses an apparatus (container) for heating food comprising containing means for use with a radiant heat applying device such as toaster (Abstract). Unwin also discloses that "it is preferred that outer layer is polytetrafluoroethylene (PTFE) or tetrafluoroethylene (Teflon ®)" (p. 2). Unwin also discloses that "the inner layer is a weave of glass" (p. 2). Unwin also discloses that "[h]owever, other materials suitable for this purpose are not excluded" (p. 2).

In regard to claim 2, Unwin discloses a method of heating food, wherein said food is enclosed in containing means having at least one panel made of flexible multilayer film comprising a layer of PTFE (Abstract, p.2). Unwin discloses applying radiant heat to the food enclosed in the container (Abstract, p.2).

In regard to claims 3 and 9, Unwin discloses "the holes 8 form handles for retrieving the pouch from the toaster", "alternative handle or tab arrangement may be used" (pp. 5, 7, Fig. 1, Fig. 2, Claim 5).

In regard to claims 4 and 10, Unwin discloses fluid-absorbing means are present inside the containing means, the fluid-absorbing means having one of hydrophilic and

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lipophilic properties to absorb at least one of excess moisture and fats produced by the food during heating (pp. 2, 3, Claim 6).

In regard to claim 5, Unwin discloses that apparatus (container) is adapted for being received in a bread slice receiving slot of an electric bread toaster (pp. 2, 3, Claim 8).

In regard to claims 6 and 11, Unwin discloses that apparatus (container) comprises two facing walls sealed along all sides (p. 4)

In regard to claims 7 and 12, Unwin discloses that apparatus (container) comprises two facing walls sealed along three edges to define a pouch having an open mouth (p. 2, Fig. 1, 2).

In regard to claim 8, Unwin discloses that "a sandwich, beans, bacon or even scrambled egg mix may be placed in the pouch" (p. 5).

Unwin do not disclose that the panel of the container is made of flexible multilayer film comprising layers of PFA and FEP on a core layer of PTFE, and the outer wrapper.

Beale et al discloses an apparatus (non-stick mold, tray, container) made from a blend of fluoropolymer used in food processing industry (Abstract, [0007]). Beale et al discloses that conventionally used materials such as composition of fabric materials consisting of woven, knitted or non-woven fibers of glass fibers "could potentially flake off into the food product and cause a serious health hazard" [0006]. Beale et al discloses that the apparatus (container) "is made from a blend of at least one fluoropolymer " [0024]. Beale et al discloses that "[f]luoropolymers have excellent high

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temperature stability, low surface energies resulting in non-stick properties, and good flexibility" [0025]. Beale et al discloses that "[t]he fluoropolymer component of the blend may be a single fluoropolymer or a blend of two or more fluoropolymers" [0025]. Beale et al discloses that "[s]uitable fluoropolymers include polytetrafluoroethylene (PTFE), ... or vinylidene fluoride, such as PFA or MFA (copolymers of tetrafluoroethylene and perfluoroalkylvinylethers); FEP (copolymers tetrafluoroethylene and hexafluoropropylene)" [0025]. Beale et al discloses that "[f]luoropolymers, such as, for example, PTFE, may be shaped by compression where its chemical stability and non-wettability make it suitable for use in extreme circumstances such as heat and freezing" [0027].

In summary, Unwin discloses method and apparatus (container) for heating foods, wherein the outer layer of the container is polytetrafluoroethylene (PTFE) or tetrafluoroethylene (Teflon ®) and the inner layer is a weave of glass. Beale et al discloses an apparatus (container) used for heating in food processing made from a blend of fluoropolymers such as PFA, FEP and PTFE. Since Beale et al and Unwin disclose containers suitable for heating having a layer of PTFE, it would have been obvious to modify disclosure of Unwin and substitute the glass layer with FEP and PFA materials in order to avoid drawbacks such as flaking off into the food product and causing serious health hazard as taught by Beale et al. One of the ordinary skill in the art would have been motivated to further enclose container in an outer wrapper in order to further protect food stuff from bacterial contamination, physical damage, moisture, etc. One of the ordinary skill in the art would have been motivated to enclose individual

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containers or plurality of containers in the outer wrapper for the marketing purposes in order to display particular food content, nutritional information, brand, expiration date of product, etc.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Stulii whose telephone number is (571) 272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Vera Stulii

*V. Stulii*



**KEITH HENDRICKS  
PRIMARY EXAMINER**